

SOUTHERN UNION EXPLORATION CO.

IBLA 80-303

Decided November 26, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's competitive oil and gas lease offer NM 38430-OKLA.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

3. Oil and Gas Leases: Competitive Leases

Where an uplands competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient justification for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

APPEARANCES: Paul M. Zeis, Esq., for Southern Union Exploration Company.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Southern Union Exploration Company (SX) has appealed from the December 12, 1979, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting its high bid for parcel No. 7 at the competitive oil and gas lease sale held on September 18, 1979. Parcel No. 7 covers 22.31 acres in the Oakdale Field in sec. 9, T. 22 N., R. 13 W., Indian meridian, Major County, Oklahoma. Appellant bid \$ 26.03 per acre for a total of \$ 580.75 on the parcel.

As a basis for its decision, BLM stated that "[t]he U.S. Geological Survey [Survey] considered this bid to be inadequate and recommended that it be rejected." No other information was provided to appellant and no support for the Survey recommendation appeared in the record. The case file did contain a copy of a memorandum dated September 25, 1979, from Survey's Oil and Gas Supervisor to BLM which referred to an earlier pre-sale evaluation memorandum for parcel No. 7.

In its statement of reasons, appellant urges that

1. The rejection is contrary to 30 U.S.C. § 226 and 43 CFR § 3120.3-1.
2. The rejection has no reasonable basis in fact.
3. SX cannot determine from the bid rejection letter whether or not the criteria utilized in establishing that SX's bid was inadequate failed to include all relevant considerations, included factors which were not relevant, or whether the criteria were incorrectly applied.
4. That the bid rejection for the tract was arbitrary and capricious.

By memorandum dated June 19, 1980, this Board requested that the Survey Oil and Gas Supervisor provide a copy of the pre-sale evaluation memorandum to the Board with comments on appellant's statement of reasons and any additional support for the Survey recommendation that appellant's bid was inadequate. This Board also directed that a copy of the memorandum be sent to appellant.

The pre-sale evaluation memorandum submitted by Survey consisted of a listing of net acres and per-acre and total value as estimated by

Survey for each parcel offered at the September 18, 1979, sale. The per-acre value assigned to parcel No. 7 was \$ 100. The Oil and Gas Supervisor also attached field notes from the joint evaluation of parcel No. 7 with 3 other parcels consisting of a listing of previous sale prices of some Federal and state leases and pertinent data on certain wells in the general vicinity of these parcels and a map. In a memorandum dated June 24, 1980, transmitting these documents Survey indicated that:

After analyzing all available data, which are summarized in these file notes, the committee concluded that the bonus value of these lands should fall in a range from \$ 75 to \$ 150 per acre, and settled on \$ 100 per acre as a reasonable floor value for Parcels 6, 7, and 8. Parcel 9 was ranked at the upper end of the range, at \$ 150 per acre, because of a drilling operation in sec. 11-22N-13W.

Survey also noted that high bids received on two of these parcels were slightly above the floor values.

In response to Survey's submission, appellant asserts that the failure of Survey to consider any relevant data on costs of development including the small size of parcel No. 7, the need to unitize prior to development, problems of accessibility, and the need for a right-of-way, renders the pre-sale evaluation arbitrary and capricious. Appellant also references its arguments in its statement of reasons.

[1] The Secretary of the Interior has discretionary authority to reject a high bid at a competitive oil and gas lease sale on the basis of an inadequate bonus. 30 U.S.C. § 226(b) (1976). This right to reject competitive oil and gas lease offers is recognized in the Department's regulations at 43 CFR 3120.3-1. This Board has repeatedly upheld the authority of the Secretary to reject bids so long as there is a rational basis for the conclusion that the highest bid was too low. B. D. Price, 40 IBLA 85 (1979); Frances J. Richmond, 29 IBLA 137 (1977); Arkla Exploration Co., 25 IBLA 220 (1976); H & W Oil Company, Inc., 22 IBLA 313 (1975). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

[2] The Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of

competitive oil and gas leases and the Secretary is entitled to rely on the Survey's reasoned analysis. Gerald S. Ostrowski, 34 IBLA 254 (1978); Coquina Oil Corp., *supra*; Arkla Exploration Co., *supra*. However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided by the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., *supra*; Charles E. Hinkle, 40 IBLA 250 (1979); Gerald S. Ostrowski, *supra*; Yates Petroleum Corp., 32 IBLA 196 (1977).

BLM must provide a reasoned explanation for the record and to the offeror to support a decision rejecting a high bid offer. Although BLM may rely on Survey's expertise to support such rejection, BLM must independently evaluate the Survey recommendation and supporting rationale and itself make the decision to accept or reject the high bid. M. S. Mack, 45 IBLA 99, 101-02 (1980). No such independent evaluation by BLM occurred in this case.

Furthermore, even though Survey has now supplied some factual basis for its recommendation to this Board, Survey has still not provided any analysis or explanation of the significance of that data as it applies to parcel No. 7. In its June 24, 1980, memorandum, Survey makes only the conclusory statement that the data was considered and a bonus value determined. Neither the appellant, BLM, nor this Board should have to speculate as to how the data as applied to parcel No. 7 results in a bonus value of \$ 100. The following comment exemplifies this point. Although the sale prices provided by Survey for leases in the area vary from \$ 25 to \$ 1,035 per acre, we can not find that appellant's bid for parcel No. 7 was clearly erroneous when the value of the lease closest to parcel No. 7, so far as we can determine from the data provided, was only \$ 25 per acre and Survey has supplied no distinguishing information. We note that none of the producing wells listed are as close to parcel No. 7 as this \$ 25 per acre lease.

Finally, appellant has raised considerations which may distinguish parcel No. 7 from others in the area but there is no basis in the record before us for evaluating whether these issues have a significant impact on the value of the parcel. Therefore we will set aside the decision and remand the case file to BLM for compilation of an adequate record and readjudication of the acceptability of appellant's bid. Consistent with our decision in Southern Union Exploration Co., 51 IBLA 89 (1980), appellants must be afforded an opportunity to examine any relevant information supplied by Survey.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Frederick Fishman
Administrative Judge

